

## APA CASE MANAGEMENT

### **Prefile Meetings**

1. Taxpayers typically contact the APA Director or the Branch Chiefs to arrange a prefile meeting.
2. Branch Chiefs, after consultation with the Director, will assign the prefile to an APA team leader.
3. The Branch 2 Chief will assign an APA economist to the prefile, when appropriate; not every prefile meeting will involve an economist.
4. The APA team leader is responsible for working with the support staff to open an APA-P case file to record time and to maintain the case documentation.
5. The APA team leader is responsible for setting up the meeting with the taxpayer, contacting the field when the meeting is on a named basis, and ensuring that the taxpayer submits appropriate background information before the meeting.
6. See section 4 of Rev. Proc. 96-53 for a discussion of prefile procedures.
7. The APA team leader is responsible for preparing a file memo memorializing the discussion at the prefile meeting.
8. Prefile meetings are an opportunity for the taxpayer to learn how the APA program operates and to get some preliminary views on how APA might approach issues. Taxpayers should understand that any views are preliminary and do not reflect any significant analysis of the taxpayer=s facts. It is appropriate to discuss the relevant user fee amount.
9. APA-P cases should be closed once the taxpayer submits a user fee. Documentation associated with a closed APA-P case should be transferred to the APA file created for the associated case.
10. Periodically, the APA Director will review open APA-P cases and ask that cases open for more than 6 months without a subsequent user fee be closed. Any documentation associated with the case should be included in the closed APA-P file.

## **Dollar File Cases**

1. Under section 5.09 of Rev. Proc. 96-53, taxpayers can file a user fee by the filing deadline for a taxable year and submit the full application within 120 days thereafter. Many taxpayers avail themselves of this procedure.
2. The dollar file cases are assigned to the APA Director pending the full submission. The time a case resides in dollar file status is not counted toward APA timeliness goals.
3. Rev. Proc. 96-53 provides for extensions of the 120-day period. The APA Director authorizes such extensions. Periodically, the APA Director reviews cases in the dollar file status and will return user fees and close the case file for taxpayers delaying their submission beyond the 120 day period. Closing the case file will cause the APA program to lose jurisdiction over any year for which the filing deadline has passed.

## **Processing the User Fee**

1. The Secretary to the APA Director generally processes user fees and related documents (e.g., Form 2848 (Power of Attorney) and taxpayer representative's letter) received by the APA Office. The Secretary prepares an APA Origination Form, which includes the APA code (e.g., APA or APA-RN) for the case, and ensures that (a) copies of the APA Origination Form, the submitted Form 2848, and the taxpayer representative's letter, and (b) the original user fee (copy retained by the APA Office) are hand-carried to the User Fee Office, CC:PA:T:CRU, Attn: Carolyn Johnson, Main IRS Bldg., Rm. 6561. The shared drive contains an electronic copy of the APA Origination Form.
2. If the taxpayer submits the user fee directly to the User Fee Office, the User Fee Office will fax the APA Office with the taxpayer's name and the amount of the user fee. Within one business day, the APA Office will respond by fax to the User Fee Office with the APA Origination Form. If the User Fee Office did not already receive the Form 2848 and the taxpayer representative's letter with the user fee, the APA Office will also include the documents in its fax.
3. Upon receipt of the user fee and related documentation, the User Fee Office enters the related information into its user fee system and assigns a Techmis number to the case. After the User Fee Office transmits a printout of the Techmis number and case information, the Secretary to the APA Director prepares two case files, one for the APA Docket Room and the other for the assigned APA Team Leader.

## **Submitted APA Cases - Case Assignment**

1. Once the taxpayer files a complete submission, the APA Director in consultation with the Branch Chiefs assigns the case to a team leader. In general the team leader who handled any prefile meeting will handle the full case. However, where caseload and other considerations dictate a different result, a new team leader may be assigned to the case.
2. Concurrent with the assignment of the APA team leader, the APA Director in consultation with the Branch 2 Chief will assign an APA economist, or determine that the APA team leader should work with the Branch 2 Chief to locate an appropriate field economist.

### **Forming the APA Team**

1. The first step in processing a case is the formation of the APA team. Our goal is to have the team identified within two weeks of the assignment of the case to the team leader. In general, APA team leaders will work through the LMSB International Territory Managers to find an IE.
2. In a bilateral case, the APA team leader forwards a copy of the submission to the US Competent Authority manager responsible for the particular treaty partner. When forwarding the submission, the APA team leader also requests the assignment of a US Competent Authority analyst to the case.
3. To secure the assignment of an LMSB Division Counsel field attorney to the IRS APA Team, the APA Team Leader contacts the Senior Legal Counsel (International) at the Washington, D.C. headquarters of the LMSB Division Counsel. The Senior Legal Counsel (International) will determine the appropriate LMSB Division Counsel field attorney to assign to the IRS APA Team, taking into consideration the location of the international examiner and the experience of field counsel with the taxpayer or involved issues. Once a field attorney is identified, the APA team leader is responsible for opening a WLI for the Chief Counsel field office involved.
4. In all cases, the APA Team Leader contacts the Manager, LMSB International Technical Advisors, LM:PF:I, to determine whether the IRS APA Team should include a technical advisor from that office. The APA IRS Team generally will include a technical advisor if the APA request concerns cost-sharing, intangibles or services.
5. Other APA team members may be added at the suggestion of the IE.
6. If the taxpayer has prior years in Appeals with a related transfer pricing question, the appropriate appellate conferee should be invited to join the APA team.

### **The First Meeting**

1. Within 45 days of the assignment of the case (full submission) to the team leader, the APA team should hold its first meeting with the taxpayer.
2. In advance of the first meeting, the APA team must read and digest the submission, and generally should hold at least one internal meeting in advance of the meeting with the taxpayer. Often the APA team will first confer by conference call, and then meet the day before the meeting with the taxpayer.
3. Every effort should be made to make the first meeting as useful as possible. Often it is helpful to prepare a list of questions based on the submission. These questions should be given to the taxpayer in advance of the first meeting, to allow the taxpayer sufficient time to prepare a full response. Prior to sending the questions to the taxpayer, the APA team leader must consult with his or her Branch Chief to determine what review of the outgoing questions is appropriate.

### **Case Plan**

1. Every APA must have a case plan. For a unilateral APA, the case plan should conclude with an executed APA within 12 months of the full submission. For a bilateral APA, the case plan should target a signed recommended negotiating position within 9 months of the full submission. In a small business taxpayer case, the case plan should conclude with an executed APA within 6 months. Routine renewals should require less time than new APAs and the case plan should target a shorter time frame. Consult with the Branch Chief when establishing a case plan for a renewal. The 12 month, 9 month, or 6 month or other target date must be entered into the CASE-MIS system.
2. The case plan is a flexible document that should be tailored to the needs of the case. The case plan should be developed jointly with the taxpayer. Generally, the case plan will establish one or more interim meetings with firm dates to allow the taxpayer and all team members to arrange their schedules. Two to four meetings, including the initial meeting, would be typical for an APA case. The case plan should include milestones such as the resolution of specific issues, the timing of supplemental questions and responses, and the completion and review of a draft APA or negotiating position. The case plan should build in 21 days for the field=s review of the final unilateral APA or the negotiating position, 1 week for Branch Chief review, and 1 week for the APA Director=s review.

### **Working an APA Case**

1. Team leaders should keep their Branch Chief informed on significant developments in their cases. In particular, team leaders should discuss with their Branch Chief issues where there is a significant difference of opinion involving the taxpayer, the field, or the economists.
2. Team leaders are responsible for updating the case status codes as part of their weekly time reporting. The case status codes record whether the case is progressing according to the case plan, i.e., code 521, or that the case has stopped progressing for some reason, i.e., codes 522 - 529, 531, and 532.
3. The APA managers monitor the case status codes and use these as one tool to monitor case progress. Team leaders should also discuss with their Branch Chief ways to move the case forward.
4. APA economists submit case activity reports twice monthly to the Branch 2 Chief, one by the 15<sup>th</sup> and a second by the 30<sup>th</sup> of each month.

### **Coordinating Technical Issues**

1. If APA request raises complex or novel international tax issues requiring technical coordination, the APA Team Leader should contact his or her APA Branch Chief who will seek assistance from the appropriate branch in the Office of Associate Chief Chief (International). The APA Team Leader will request his or her secretary to create a WLI for the branch providing the assistance.

### **The Shared Drive**

1. All case related documents must be located on the R drive.
2. Each case should have a unique R drive folder.
3. Within each case specific folder, there should be at least two subfolders. One subfolder titled "Final Documents" is for the final APA documents, i.e., the APA, the negotiating position, the Director memo, and the Associate memo. A second subfolder titled "Economic Analysis" should contain all economic data.

### **The APA Case File**

1. The team leader maintains and closes the official APA case file, insuring that the file contains the following documents and materials:
  - \_ the APA Request and related documents submitted by the taxpayer;
  - \_ the case plan;

- a file memorandum, or file note, for every meeting or significant telephone call;
  - copies of all outgoing correspondence, e.g., questions or information requests sent to the taxpayer;
  - the originals of all correspondence from the taxpayer or the field, e.g., responses to questions or other information;
  - copies of emails that perform the function of a conference memo, document a decision, or transmit comments on a draft document;
  - copies of all analysis prepared by any APA or field economist;
  - copies of any assistance from a technical branch;
  - a copy of the Director=s memo;
  - a copy of the Associate=s memo
  - a copy of the signed recommended negotiating position;
  - a copy of the redacted recommended negotiating position;
  - a copy of the signed APA.
2. The official APA case file should not contain the original executed APA. The team leader should provide it to his/her secretary for safekeeping in the APA Docket Room.

### **Due Diligence for Filed APA Years**

1. During the APA process, the taxpayer may file a tax return for one or more completed tax years of the APA term. As part of the APA Team=s due diligence, the team leader should get information from the taxpayer on the application of the transfer pricing method to the filed year(s).
2. The team leader should include the information in the Director=s memo or recommended negotiating position so as to facilitate review and US Competent Authority consideration.
3. Some taxpayers have followed the practice of filing pro forma annual reports consistent with their submission during the APA process. For these taxpayers, providing this information will involve little or no additional work. In an exceptional case (e.g., a complex profit split which the taxpayer doesn=t currently follow), the taxpayer may not have the information readily available for inclusion in the Director=s memo or recommended negotiating position. Team leaders should bring these exceptional cases to the attention of their branch chief.

### **Negotiating Positions**

1. Negotiating positions are the recommended position of the APA program to the US Competent Authority on the most appropriate arm's length method taking into account the US Treasury Regulation, the [appropriate treaty], and the US Competent Authority's experience with the [appropriate] competent authority. Every negotiating position should contain the above language in the opening paragraph.
2. Negotiating positions are in the form of a memorandum from the team leader and the branch chief, to the APA Director. At the end of the position paper is a signature block for the APA Director to sign, indicating approval.
3. The negotiating position should describe (i) the parties, (ii) the proposed term, (iii) the covered transactions, (iv) the taxpayer's proposal, (v) the APA team's recommended position, (vi) the IRS field's concurrence or remaining concerns regarding the recommended position, and (vii) the taxpayer's position on the recommended position. The negotiating position should provide a detailed explanation of the selection of any recommended comparable set and, where appropriate, a discussion of why the taxpayer's set was modified.
4. The negotiating position should contain a separate, concise summary of the APA team's recommended position.
5. The purpose of the negotiating position is to provide a comprehensive background document for the US Competent Authority analyst. The negotiating position should contain all the factual information the analyst might need to negotiate the case, as well as the APA team's analysis of those facts. The analyst will need the taxpayer's position as that position will have been communicated to the foreign competent authority and any material differences between the recommended negotiating position and the taxpayer's proposal needs to be explained. Tables comparing the taxpayer's position with the APA team's position are often useful.
6. It is appropriate to include suggested negotiating strategies, issues that might be compromised, and alternative positions.
7. Under APA policy, the team leader provides a redacted copy of the recommended negotiating position to the taxpayer. The redacted negotiation position should include the facts of the case and the recommended TPM. Redactions include the APA Team's analysis, negotiating strategy, alternative positions, and any information (including any discussion that reflects the information) received from the foreign competent authority.

8. The Office of Associate Chief Counsel (International) considers information received from a foreign competent authority is confidential and protected by the applicable treaty provisions.
9. The redacted negotiating position should include information provided by the taxpayer regarding the foreign competent authority's views as factual information to be verified by the taxpayer. The redacted negotiating position must identify such information as having been received through the taxpayer.
10. The team leader should assume that the taxpayer will share any information provided by the APA Team with the foreign competent authority. The team leader should always provide a copy to the US Competent Authority analyst of any redacted negotiating position shared with the taxpayer.

### **Negotiating Position Review**

1. Negotiating positions are reviewed by (i) the field, (ii) the economist, (iii) the taxpayer, (iv) the Branch Chief, (v) the APA Director, and (vi) the Associate Chief Counsel (International).
2. A complete draft negotiating position should be sent out to the field for a 21 day review period with a copy to the Branch Chief. The economist will review the draft negotiating position before it is sent to the field. The field should concur or state any remaining issues to the team leader. The field's concurrence can be in writing or by oral communication. The team leader should memorialize oral communication in a file memorandum.
3. A redacted draft negotiating position is reviewed by the Branch Chief and then sent to the taxpayer. Redactions are not to be shown in the copy provided to the taxpayer, i.e., don't black-out text or leave blank pages. Remaining text should be renumbered. The redacted copy should be given to the Branch Chief three days prior to sending it to the taxpayer.
4. The final negotiating position, including the views of the field and the taxpayer, should be forwarded to the Branch Chief with an anticipated one week review period.
5. Along with the negotiating position, include a brief memorandum summarizing the key elements of the negotiating position (the "Associate memo"). The summary is in the form of a memorandum from the APA Director, the Branch Chief, and the team leader, to the Associate Chief Counsel (International).
6. The Associate memo should briefly describe the taxpayer, the taxpayer's business, the covered transactions, the proposed TPM, the taxpayer and field



position, and any interesting, controversial, or otherwise significant issue raised by the case. Generally the Associate memo is one to two pages in length, however, longer memos may be necessary in particular cases.

7. Once the Branch Chief has approved the negotiating position and the Associate memo, the package is forwarded to the APA Director for review. To the review package add an undated transmittal memorandum from the APA Director to the Director, Tax Treaty. The entire package should be in a yellow signature folder. The APA Director will then forward the Associate memo to the Associate and, after a discussion with the Associate, will sign the negotiating position and the transmittal memo.
8. The signed package is returned to the APA secretaries for forwarding to Competent Authority. The secretaries are responsible for transmitting the signed recommended negotiating position to the US Competent Authority. Copies of the negotiating position are distributed to all professional APA staff. The secretaries will also send a copy to key APA team members, i.e., the IE, field economist, field counsel, an appellate conferee. The secretaries will work with the APA team leader to assure proper distribution to the APA team.
9. Cases with signed negotiating positions should be in case status code 515, i.e. pending in Competent Authority.

### **Unilateral APA Review**

1. Unilateral APAs are reviewed by (i) the field, (ii) the economist, (iii) the taxpayer, (iv) the Branch Chief, (v) the APA Director, and (vi) the Associate Chief Counsel (International)
2. A complete draft APA should be sent out to the field for a 21-day review period with a copy to the Branch Chief. The economist will review the draft APA before it is sent to the field. The field should concur or state any remaining issues to the team leader. The field's concurrence can be in writing or by oral communication. Oral communications should be memorialized by the APA team leader in file memorandum.
3. A draft APA is sent also to the taxpayer with a cover letter explaining that the draft is subject to APA management review and approval.
4. Once the field and the taxpayer have provided their views on the draft APA, the team leader submits a review package to the branch chief. The review package includes (i) a detailed file memorandum (the APA Director memo) and (ii) an Associate memo. The team leader should anticipate a one week Branch Chief review period.

5. The Director memo is a comprehensive discussion of the case which serves as the definitive case file memo. The Director memo is similar to a negotiating position in that it includes a description of the (i) the parties, (ii) the term, (iii) the covered transactions, (iv) the taxpayer=s initial position, (v) the agreed TPM, and (vi) the field=s concurrence or remaining concerns. The Director memo also explains why the APA is unilateral rather than bilateral. The Director memo should discuss all material issues analyzed during the case development. The Director memo is a critical document for review of annual reports filed in accordance with the APA, for any subsequent renewal, and for resolution of any issues arising under the APA. The Director memo should describe why the agreed TPM is the best method under the Treasury Regulations.
6. The Associate memo should briefly describe the taxpayer, the taxpayer=s business, the covered transactions, the proposed TPM, the taxpayer and field position, and any interesting, controversial, or otherwise significant issue raised by the case. Generally the Associate memo is one to two pages in length, however, longer memos maybe necessary in particular cases.
7. Once the branch chief has approved the APA, the Director memo, and the Associate memo, the review package is forwarded to the APA Director in a yellow folder. The review package should include two copies of the APA for signature. The APA Director will forward the Associate memo to the Associate and, after a discussion with the Associate, will sign both copies of the APA.
8. The signed APAs are returned to the APA team leader for transmittal to the taxpayer for signature. The taxpayer should sign both copies and then return one executed original to the APA team leader.

### **Bilateral APA Review**

1. Bilateral APA review is largely similar to unilateral APA review. The following are the key differences.
2. Bilateral APAs are not sent to the field for comment. Thus, bilateral APAs are reviewed by (i) the taxpayer, (ii) the Branch Chief, (iii) the APA Director, and (iv) the ACC(I).
3. The bilateral APA review package sent to the Branch Chief includes (i) the APA, (ii) the recommended negotiating position paper, (iii) the mutual agreement, (iv) the Director memo, and (v) the Associate memo.
4. The Director memo for bilateral APAs does not need to restate the information contained in the negotiating position. The purpose of the Director memo is to

describe in detail any differences between the final APA and the recommended negotiating position. If there are no differences, the Director memo states there are no differences. The Associate memo, in addition to the information required for a unilateral APA, should also describe any differences between the final APA and the recommended negotiating position.

### **Cycle Time**

1. The APA Team Leader must specify the time necessary to complete a recommended US negotiating position, bilateral APA, or unilateral APA in the last paragraph, entitled “Cycle Time,” of the recommended US negotiating position or the Director Memo for the bilateral or unilateral APA. The Cycle Time paragraph will not provide the final cycle time as it will not take into account all levels of review. It will provide an important history of the case’s processing, however.
2. For a recommended US negotiating position, the cycle time starts with submission date of the APA request and ends on the date the APA Team Leader submits the negotiating position to the APA Director for review.
3. For a bilateral APA, the cycle time starts with the date of signing of the latter of the two mutual agreement letters and ends on the date the APA Team Leader submits the bilateral APA to the APA Director for review.
4. For a unilateral APA, the cycle time starts with the submission date of the APA Request and ends on the date the APA Team Leader submits the unilateral APA to the APA Director for review.
5. For a recommended US negotiating position or a unilateral APA, the first sentence of the “Cycle Time” paragraph for the recommended US negotiating position or Director Memo should read: “This [recommended US negotiating position or unilateral APA] took \_\_ months to complete.” For a bilateral APA, the first sentence of the “Cycle Time” paragraph of the Director Memo should read: “This bilateral APA took \_\_ weeks to complete.” The APA Team Leader may add a concise explanation of why the cycle time was longer or shorter than expected.

### **Case Closing Procedure**

1. On receiving the executed APA from the taxpayer, the APA team leader will complete the APA survey form and close the case file within one week.

2. The APA team leader is responsible for reviewing the case file to ensure it is complete. The complete file, together with the APA survey is given to the secretary.
3. The secretary prepares transmittal letters to Division Counsel and the appropriate LMSB International Territory Manager (ITM). These letters include a list of the relevant APA team members, i.e., field counsel for the Division Counsel letter and the IE and other IRS personnel for the ITM letter. This information can be found in the APA survey.
4. The secretary sends a copy of the executed APA together with an APA questionnaire to the taxpayer. If the taxpayer returned both executed APAs to the team leader, this letter will transmit the taxpayer's executed original APA.
5. The secretaries will prepare the case closing form, which is signed by the team leader and the Branch Chief. The secretaries will close the case on CASE-MIS and file the closed case file in the Docket Room.